IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KENNETH B. JONES,	)	
Plaintiff,	)	
v.	)	**CAUSE NO. 4:16-CV-16-3451**
	)	**JURY TRIAL REQUESTED**
ARBIN INSTRUMENTS, INC.	)	
Defendant.	)	

ORIGINAL COMPLAINT AND JURY REQUEST

TO THE HONORABLE JUDGE OF THIS COURT

COMES NOW, the plaintiff, Kenneth B. Jones ("Plaintiff"), complaining of and about Arbin Instruments, Inc. ("Defendant"), and for cause of action will respectfully show unto this Court the following:

PARTIES AND SERVICE

1. Plaintiff is a citizen of the United States of America and the State of Texas and currently resides in Brazos County, Texas.

2. Defendant, Arbin Instruments, Inc. ("Defendant"), is Defendant's former employer and is a Texas entity doing business in Brazos County and can be served through its attorney Stephen R. Hollas, at 405 Technology Pkwy., Bldg. C, College Station, Texas 77845.

JURISDICTION AND VENUE

3. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

4. All parties are subject to personal jurisdiction in the Southern District of Texas. Defendant made itself subject to this Court's jurisdiction by maintaining a physical presence and business operations in this District.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 (b) & (c) because Defendant resides in this District and most of the relevant facts occurred in this District.

NATURE OF THE ACTION

7. This is an action brought pursuant to 42 U.S.C. § 1981 and Title VII of the Civil Rights of 1964, 42 U.S.C. § 2000e-2(a) on the basis that Plaintiff was discriminated against because of his race (African-American) and pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. 623(a) on the basis that Plaintiff was discriminated aginst because of his age (over 40 years old).

CONDITIONS PRECEDENT

8. All conditions precedent to jurisdiction have occurred or been complied with. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission – Civil Rights Division (Charge Nos. 460-2016-00593) within one hundred and eighty days (180) or three hundred days (300) of the acts complained of herein, and the Plaintiff's Original Complaint is filed within ninety (90) days of receiving their Notice of Right to Sue. **Exhibits A & B**.

FACTS

6. Plaintiff's employment at Arbin Instruments, Inc. ("Arbin") began in 2005 when he was hired as a temporary contract worker. Sometime in early October, Plaintiff was offered a full-time position in the Production/Assembly Department of the company and became a full-time employee on October 10, 2005.

7. Of the more than 50 employees at Arbin, Plaintiff was the sole African-American.

8. At the time he was hired, his official duties included chassis and cable assembly, aluminum heat sink material precision cutting, fan assembly, operation of construction machines, and fork-lift operations.

9. However, alongside his assigned duties, Plaintiff was required to perform an abundance of tasks which were unrelated to his position.

10. These tasks included assembling office furniture; setting up and installing video monitors and electronic media on walls; installing sanitation implements such as hand towels and soap devices; moving furniture (beds, mattresses, chairs, etc.) in the two inhabitant living units, picking up equipment; making post-office runs; making bank deposits and withdrawals; going to grocery stores to pick up food and/or cases of beverages; and taking the company and owner's personal vehicles for inspection, maintenance and repairs.

11. Notably, no other Arbin employee was required to perform these types of tasks—not even Matthew Sherman, the President's Assistant.

12. In 2011, Plaintiff spoke with the owner, Dr. John Zhang, to be considered for a higher skilled position.

13. Since Arbin routinely employed individuals with no experience in higher skilled positions, Plaintiff believed his vast experience with Arbin-specific instruments would render him a good candidate.

14. Conversely, Dr. Zhang administered an oral exam to determine Plaintiff' knowledge by asking questions such as, "What is the symbol for a resistor?" When Plaintiff answered the questions correctly, Dr. Zhang appeared astonished and agitated.

15. These exams were not administered to any other Arbin employee requesting a promotion. Despite Plaintiff's performance during the exam, no raise or promotion came of that meeting.

16. After Plaintiff had been working in the company for approximately 5 years and had received exceptional work performance reviews, Arbin provided a cost of living wage increase. While other Arbin employees' hourly wage increased by dollars or more, Plaintiff received a twenty-five cent increase.

17. This was despite the fact that Plaintiff had greater responsibilities and more college education than his peers.

18. In July 2013, Andrew Kuvlesky, who worked in the Shipping Department, was promoted to Assembly Supervisor, leaving a vacancy in the Shipping Department. Plaintiff eventually was approached to fill the physically grueling position.

19. Plaintiff cited his age (60 years old at the time), his persistent back pain, and the physical nature of the position and declined the offer.

20. After other Arbin employees also declined the position, Mr. Sherman gave Plaintiff an ultimatum to stay employed.

21. He said, "Ken, this is the deal, if you don't accept this position, someone is going to lose their job."

22. Hesitantly, Plaintiff complied.

23. However, his pay remained the same while his responsibilities doubled.

24. After he began working in the packaging department, Plaintiff was not only required to perform the physically demanding and sometimes dangerous work of packaging machines weighing between 100-2,000 pounds, but was still required to fulfill his former

responsibilities in the production department and perform the "flunky," non-employment related, tasks.

25. In his early sixties, Plaintiff managed to package all of the machines that were "ready" on time and without errors— garnering the praise of his co-workers and supervisors for his quality of work and tenacity.

26. Despite his exceptional work, in July of 2015, Plaintiff' supervisor, Tim Zhang, instructed him to double his packaging production.

27. Plaintiff, who explained to Tim Zhang not only that doubling the output was physically impossible for one person, but that he could not double his output if machines were not ready to be packaged.

28. Tim Zhang, however, ignored Plaintiff's explanation and told Plaintiff that he was not "qualified" to be in a higher skilled department and that he was "hired solely to perform manual labor."

29. On July 15, 2015, Plaintiff was called into another meeting with John Zhang, and several other Arbin supervisors. Here, he was given yet another ultimatum—double his machine shipment production work load or be terminated.

30. At that point, after enduring overwhelming prejudice, inequality and disrespectful treatment, and understanding that his supervisors were assigning a task knowing anyone would fail it in order to force him to quit, Plaintiff felt compelled to resign.

CAUSE OF ACTION – DISCRIMINATION BECAUSE OF RACE PURSUANT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 42 U.S.C. § 2000e-2(a)

31. Plaintiff incorporates by reference paragraphs 6-30 as if set forth fully here.

32. Plaintiff is an African American male. His race/ethnicity/color places him in a protected class under Title VII.

33. During the course of his employment, up to including his constructive discharge, Plaintiff was subjected to discrimination at his workplace because Defendant treated Plaintiff unequally due to his race/ethnicity/color.

34. While other employees performed work in according to their job description, Arbin supervisor and owners habitually required only Plaintiff to perform degrading work outside the scope of his employment and even personal in nature.

35. Furthermore, Arbin paid Plaintiff considerably less than other non-African American similarly situated employees.

36. Moreover, employment policies that were designed to protect the health and wellbeing of employees, such as the Arbin company directive that employees over the age of 40 not be required to perform intense physical work, were blatantly ignored with respect to Plaintiff.

37. Lastly, Arbin managers demeaned Plaintiff's intelligence when they administered an oral test for a higher-skilled job, which was not given to any other candidate, and when they told Plaintiff the only reason he, the only African American in the entire company, was hired was to perform manual labor.

38. Defendant's behavior was motivated by discriminatory motives. Because of Defendant's discriminatory behavior, Plaintiff has suffered damages that were the direct and proximate result of Defendant's violation of Title VII, and for which Defendant is liable.

CAUSE OF ACTION – DISCRIMINATION BECAUSE OF AGE
PURSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967
29 U.S.C. 623(A)

39. Plaintiff incorporates by reference paragraphs 6-30 as if set forth fully here.

40. Plaintiff was 60 years old when he left Arbin and his age places him in the protected group of individuals over 40 years old that the ADEA applies to.

41. Defendant's actions towards the end of Plaintiff's employment amounts to age discrimination in violation of the ADEA.

42. Among Defendant's discriminatory behavior included giving Plaintiff ultimatums in order to remain employed.

43. Defendant also required Plaintiff to unreasonably double his workload.

44. Furthermore, Defendant violated its own directive of not requiring employees over the age of 40 to perform grueling physical work.

45. Defendant even passed Plaintiff for promotions and/or raises in favor of younger applicants.

46. Defendant's acts in violation of the ADEA have caused Plaintiff to suffer damages that were the direct and proximate result of Defendant's violations of the ADEA and for which Defendant is liable.

CAUSE OF ACTION – DISCRIMINATION BECAUSE OF RACE
PURSUANT TO THE TEXAS LABOR CODE
§21.051(1)

47. Plaintiff incorporates by reference paragraphs 6-30 as if set forth fully here.

48. Defendant's disparate treatment of Plaintiff also violated the Texas Commission on Human Rights Act, Texas Labor Code §21.051(1), which provides, in pertinent part that "An employer…commits an unlawful employment practice if because of race, color…employer: …discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment."

49. Because of Defendant's discriminatory behavior, Plaintiff has suffered damages that were the direct and proximate result of Defendant's violations of the Texas Labor Code, and for which Defendant is liable.

JURY REQUEST

39. Plaintiff hereby requests a trial by jury and tender the appropriate fee with this Original Complaint.

RELIEF REQUESTED

Plaintiff Kenneth B. Jones respectfully request that the Defendant, Arbin Instruments, Inc., be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for specific relief and/or damages in an amount within the jurisdictional limits of the Court; together with interest as allowed by law; costs of court; and such other and further relief to which the Plaintiff may be justly entitled at law or in equity.

Dated November 21, 2016

Respectfully submitted this day,

SMITH REED & ARMSTRONG, PLLC

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